

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 1-18-07
BILL NO. SB 78



P.O. Box 21852
Billings, Mont. 59104

Senate Fish and Game Committee
2007 Montana Legislature
Helena, Montana
January 15, 2007

Dear Senators,

We are writing on behalf of the executive board and membership of **WALLEYES FOREVER**, a fishing club based in Billings with a rapidly growing statewide membership, to tell you that we **STRONGLY SUPPORT SENATE BILL 78** and feel its passage is extremely important to all Montanans.

Although we're a walleye club in name, if we get wind of salmonflies out on the Big Hole, Mothers Day caddis on the Yellowstone or a good old "hopper hatch" on the Madison, the walleye boats stay home and we morph into stream and river fishermen. And, like so many other Montanans, we hunt big game and birds, camp and take our families on outdoor adventures on waters all over Montana. This issue touches us all.

Spelling out the specifics of safe and reasonable public access at bridges crossing the streams and rivers of Montana is critical for the state's Stream Access laws to work. SB 78 does an excellent job of doing that and extremely fair to all parties concerned. We applaud Sen. Larson for doing such a skillful job of bill-crafting on such a difficult issue.

We looked carefully at the fiscal note attached to the bill and feel that the costs to implement SB 78 are extremely reasonable. In truth, clarifying this issue for sportsmen and landowners alike is worth almost whatever the cost would be and would go a long ways toward improving sportsman-landowner relations in Montana.

In short, we urge you to do whatever you can to pass SB 78 into law.

Sincerely,
Nathan McClenning, President
Jerry Richardson, Vice-

Stream Access at Roads and Bridges Legislation

Many landowners and recreationists alike believe that the Attorney General's opinion should be codified in statute to clarify the debate over public access at county bridges including the rights-of-way.

In 2005, failed House Bill 133 said counties could allow fencing up to bridge abutments but did not offer any provisions for public access, rather, it could have allowed fencing that could preclude public access. Many anglers and river users initially resisted the idea of allowing landowners to place fences across the public right-of-way and connecting directly to bridge abutments. They saw this as an encroachment on a public right of way, and cited instances where "aggressive" fences (more than four strands of wire, taller than 48 inches, and some with electrified strands) had been installed, apparently "intended to keep people out rather than to keep livestock in". Such fences, they said, made access nearly impossible and unsafe for all.

"Recreationists and landowners alike are now acknowledging the advantages of allowing legal fencing (as defined in 81-4-101, MCA) up to bridge abutments. For landowners, such fencing is generally easier to install and less expensive to maintain than fencing across the stream channel because it isn't subject to seasonal runoff and debris jams. For recreationists, fencing to the bridges means fewer fences across the stream, which is safer, more convenient, and more aesthetically pleasing." (STREAM ACCESS IN MONTANA, A Montana Policy Report, Public Policy Research Institute, University of Montana, May 18, 2006.)

Speaking to the FWP, Region 3 Citizens Advisory Council, the sponsor of HB 133 Rep. Debbie Barrett said, "We need to clarify stream access and not weaken the current law. In Montana it is up to the private landowner to keep livestock in but is against the law to set up barriers." (FWP, Region 3, CAC, May 3, 2006 Minutes)

At a Montana Fish, Wildlife and Parks Commission meeting (November 5, 2005, MWF notes) many people said that a standard legal fence does not unduly impede access, but most recreationists prefer some sort of pass through, stile, gate, or rollers (for boat access). Some landowners, county commissioners and a representative of the current administration also acknowledged the advantages of such accommodations— as long as the fence will contain livestock, pass through's and other measures allow public access with less wear and tear on fence wires and posts. However, some people said that some access points may simply be too rugged due to natural terrain, unsafe, cost too much to install, and terrain issues may make it impractical to provide access at every point where access may be legally possible.

Options

Montana Wildlife Federation and Montana Chapter of Trout Unlimited have been working since the 2005 legislative session on a new bill to resolve the related issues titled the "Bridge Access Partnership Bill".

MWF and TU have included Montana Fish, Wildlife and Parks, county commissioners, landowners, legislators, outdoor recreationists, various appointed citizen councils (PLPW, FWP regional Citizen Advisory Councils) and Montana Association of Counties in the discussions that have resulted in this bill. The current PLPW Council has given it a "do pass" recommendation!

MWF, TU and others believe this homegrown, Montana solution will resolve and clarify most of the issues and legalities of public access at bridges, the authorities of local and state agencies, and improve relationships between stream and river users and private landowners.

This bill will:

- create reasonable livestock control and public access to streams under the watchful eye of the county with FWP support;
-

Senate Bill 78

Sportsmen/sportswomen Club Supporters

(Representing approx. 15,000 members)

- Anaconda Sportsmen
- Big Sky Upland Bird Assoc (Missoula)
- Billings Rod and Gun Club
- Custer County Rod and Gun
- Dawson Rod and Gun Club (Glendive)
- Federation of Flyfishers (Billings)
- Flathead Wildlife Assoc
- Gallatin Wildlife Assoc. (Bozeman)
- Helgate Hunters and Anglers (Missoula)
- Helena Hunters and Anglers
- Laurel Rod and Gun
- Libby Rod and Gun
- Magic City Flyfishers
- Medicine River Canoe Club (Great Falls)
- Public Lands/Water Access Association
- Ravalli County Fish and Wildlife
- Russell Country Sporstmen (Great Falls)
- Red Lodge Rod and Gun
- Southeastern Sportsmen
- Walleyes Forever
- Walleyes Unlimited
- Montana Wildlife Federation; and
- Trout Unlimited and Local Chapters (3,500 members)